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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,901	02/03/2004	Thomas M. Eubanks	1116-075A1	9181
71739 7590 12/08/2008 CONCERT TECHNOLOGY AND WITHROW & TERRANOVA 100 REGENCY FOREST DRIVE , SUITE 160 CARY, NC 27518				
EXAMINER				
GELIN, JEAN ALLAND				
ART UNIT		PAPER NUMBER		
2617				
MAIL DATE		DELIVERY MODE		
12/08/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/769,901

Applicant(s)

EUBANKS, THOMAS M.

Examiner

JEAN A. GELIN

Art Unit

2617

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26-35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This is in response to the Applicant's arguments filed on August 07, 2008 in which claims 26-35 are currently pending.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 26 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Ravi et al. (US 6,240,280).

Regarding claim 26, Ravi teaches a system (fig. 1), comprising: a CD player that produces an audio signal ((i.e., disk player 18), it is also true that a CD player can be used by service provider to broadcast audio signal); a memory unit for storing one or more templates (i.e., user has stored in the memory program type codes (templates), col. 3, lines 26-53); and a recognition processor, coupled to said CD player, which can be located at the service provider and used by the provider for transmission audio signal, and to said memory unit, for receiving said audio signal (i.e., signals from the provider are picked up by antenna 12 of the radio receiver in col. 2, lines 35-49 for the microcontroller to detect and monitor incoming information such traffic announcement,

weather or news), generating templates from said audio signal (i.e., a flag (corresponding to template) is generated in the audio signal as an announcer), and matching said generated templates to said one or more templates stored in said memory unit (col. 2, line 53 to col. 3, line 53).

Regarding claim 28, Ravi teaches wherein a template is a digital representation of a sample of an audio signal (col. 2, line 53 to col. 3, line 53).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ravi in view of Mimick et al. (US 5,594,601).

Regarding claim 27, Ravi teaches all the limitations above except programming a CD player wherein the CD player is caused to automatically skip to a next song.

However, the preceding limitation is known in the art of communications. Mimick teaches a method that allows a user to program or edit, via keystrokes, a program or sequence of tracks to be played (abstr.). Therefore, it would have been obvious to one of ordinary skill in the art, at the time of the invention, to implement the technique of Mimick within the system of Ravi in order to allow a user to program the communication device, and play only the desired track.

Allowable Subject Matter

6. Claims 29-35 would be allowable upon receiving a terminal disclaimer to overcome the double patent rejection recited in the previous office action.
7. The following is a statement of reasons for the indication of allowable subject matter: claims 29-35 are allowed for the reasons recited in the Applicant's remarks pages 3-5, filed on 08/07/08.

Response to Arguments

8. Applicant's arguments filed 08/07/08 have been fully considered but they are not persuasive.

The Applicant argues that the only discussion in Ravi regarding use of the CD player is that a CD player may be a type of media player while the recognition processor is analyzing RDS data received from a broadcast tower. Nowhere does Ravi disclose the use of a CD in the context of broadcast station, nor the use of a CD player to generate and send RDS data.

However, the Examiner disagrees with the preceding arguments. At least claim 26 does not describe how the communication devices within the system are connected to each other, and the Examiner interprets the claims accordingly. As recited in the rejection above, Ravi discloses a broadcast station to transmit audio signal having information to alert receivers about the type of information being received. It is inherent that a broadcast station includes device to play CD such that information stored on a

CD can be played and broadcast to listeners. Ravi further teaches broadcast information (audio signal) includes TP flag or TF flag announcement and a receiver that stores codes to identify stations. If the flag (corresponding to template) matches the code, the receiver is switched to the broadcast station.

The Applicant further argues that claims 27 and 28 depend from claim 26 and therefore are allowable. However, the Examiner disagrees with the preceding assertion. The rejection of claims 27 and 28 are maintained for the reasons recited above. Therefore, the rejection is final.

The Double patenting rejection is maintained as recited in the previous Office Action.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JEAN A. GELIN whose telephone number is (571)272-7842. The examiner can normally be reached on 9:30 AM to 7:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Dwayne Bost can be reached on (571) 272-7023. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2617

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Jean A Gelin/
Primary Examiner, Art Unit 2617
December 10, 2008